

§ 4.225

or explanation, the administrative law judge or Indian probate judge may:

(1) Decide the fact or issue relating to the material requested to be produced, or the subject matter of the probable testimony, in accordance with the claims of the other interested party or in accordance with other evidence available to the administrative law judge or Indian probate judge; or

(2) Make such other ruling as the administrative law judge or Indian probate judge determines just and proper.

(b) For purposes of paragraph (a) of this section, failure to comply with discovery includes failure to:

(1) Comply with a request for the production of a document under § 4.220;

(2) Appear for examination under § 4.221;

(3) Respond to interrogatories or requests for admissions under § 4.222; or

(4) Comply with an order of the administrative law judge or Indian probate judge issued under § 4.223.

§ 4.225 Prehearing conference.

Before a formal hearing, the administrative law judge or Indian probate judge may, upon his or her own motion or upon the request of any interested party, call upon the parties to appear for a conference to:

(a) Simplify or clarify the issues;

(b) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(c) Limit the number of expert or other witnesses to avoid excessively cumulative evidence;

(d) Effect possible agreement disposing of all or any of the issues in dispute; and

(e) Resolve such other matters as may simplify and shorten the hearing.

FORMAL HEARINGS

SOURCE: 70 FR 11818, Mar. 9, 2005, unless otherwise noted.

§ 4.230 Authority and duties of the administrative law judge or Indian probate judge.

(a) The authority of the administrative law judge or Indian probate judge in all formal hearings in probate pro-

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ceedings includes, but is not limited to authority:

(1) To administer oaths and affirmations;

(2) To issue subpoenas under the provisions of 25 U.S.C. 374 upon his or her own initiative or within his or her discretion upon the request of any interested party, to any person whose testimony he or she believes to be material to a hearing;

(3) To permit any interested party to cross-examine any witness;

(4) To appoint a guardian ad litem to represent any minor or incompetent interested party at hearings;

(5) To rule upon offers of proof and receive evidence;

(6) To take and cause depositions to be taken and to determine their scope; and

(7) To otherwise regulate the course of the hearing and the conduct of witnesses, interested parties, and attorneys at law appearing therein.

(b) Upon the failure or refusal of any person upon whom a subpoena has been served to appear at a hearing or to testify, the administrative law judge or Indian probate judge may file a petition in the appropriate U.S. District Court for the issuance of an order requiring the appearance and testimony of the witness.

§ 4.231 Formal hearings.

(a) All testimony in formal Indian probate hearings must be under oath and must be taken in public, except in circumstances that, in the opinion of the administrative law judge or Indian probate judge, justify all but interested parties to be excluded from the hearing.

(b) The proceedings of hearings must be recorded verbatim.

(c) The record must include a showing of the names of all interested parties and attorneys who attended such hearing.

§ 4.232 Evidence; form and admissibility.

(a) Interested parties may offer at a formal hearing such relevant evidence as they deem appropriate under the generally accepted rules of evidence of the State in which the evidence is taken, subject to the administrative